

STRICT CRIMINAL LIABILITY REFORM FOR OIL SPILL INCIDENTS

HON. DAVID VITTER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. VITTER. Mr. Speaker, I am pleased today with Congressmen COBLE and CLEMENT to introduce legislation to eliminate the application of strict criminal liability for maritime transportation-related oil spills. Contrary to the objectives of the Oil Pollution Act of 1990, commonly referred to as OPA90, strict criminal liability serves to undermine the safe and reliable maritime transportation of oil products, and prevents timely, effective and cooperative cleanup operations in the diminishing number of situations when an oil spill occurs.

Through comprehensive congressional action just a decade ago that led to the enactment and implementation of OPA90, the United States has successfully reduced the number of oil spills in the maritime environment and has established a cooperative public/private partnership to respond effectively to the diminishing number of situations when an oil spill occurs. The Congress, though the enactment of OPA90, carefully balanced the imposition of stronger criminal and civil penalties with the need to promote enhanced cooperation in spill prevention and response efforts. In so doing, the Congress clearly enumerated the circumstances where stringent criminal penalties could be imposed in maritime oil spill incidents.

But this carefully crafted approach is being undermined in practice. Antiquated, unrelated "strict liability" statutes that do not require any showing of "knowledge" or "intent"—specifically—the Migratory Bird Treaty and the Refuse Act—are increasingly utilized as a basis for criminal investigation and prosecution for oil spill incidents. As stated in a U.S. Coast Guard directive, a company and employees, in the event of an oil spill, "could be convicted and sentenced to a criminal fine even where [they] took all reasonable precautions to avoid the discharge". Such turn-of-the-century statutes as the Migratory Bird Treaty Act and Refuse Act, in effect, have turned every oil spill into a potential crime scene without regard to fault or intent, and thus have undermined the cooperation and responsiveness that Congress sought to foster when it enacted OPA90.

Furthermore, strict criminal liability forces responsible members of the marine transportation industry to face an extreme dilemma in the event of an oil spill—provide less than full cooperation and response as criminal defense attorneys will certainly direct, or cooperative full despite the risk of criminal prosecution that would result from any additional actions or statements made during the course of the spill response. The only method available to companies and their employees to avoid the risk of criminal liability completely is to get out of the Marine oil transport business altogether.

Mr. Speaker, in May 1998, the House Coast Guard and Maritime Transportation Subcommittee conducted oversight hearing on criminal liability for oil pollution. The Coast Guard, the primary federal maritime agency

tasked with the implementation and enforcement of OPA90, testified at that hearing that it does not rely on strict criminal liability statutes in assessing culpability for oil spill incidents. With the support of other organizations, including the Chamber of Shipping of America, INTERTANKO, the Transportation Institute, and the Water Quality Insurance Syndicate (WQIS), American Waterways Operators (AWO) and two tank vessel captains testified as to the adverse impact that strict criminal liability has on the oil spill prevention and response objectives of OPA90. Notably, one tank vessel captain observed that "strict criminal liability does not make [him] do [his] job better; it only produces counterproductive stress". He continued by stating the following: "Because of the current [criminal liability] situation I cannot and will not encourage my children to follow in my footsteps. Nor can I encourage anyone else to enter the marine petroleum transportation business. Yet the industry needs good people. Strict criminal liability is a tremendous deterrent to anyone considering entering the industry at this time."

Similarly, the other tank vessel captain testified that responsible vessel owners and operators do everything humanly possible to avoid accidents, but that "the sea being a place of infinite peril, if accidents occur, despite human precautions, we must use all of the marines' skills to contain damage and to get the oil out of the water". He continued by stating that the "increased emphasis on applying criminal sanctions to incidents where oil gets into the water, regardless of whether the spill is caused by reckless or grossly negligent human actions, will undermine our ability to respond successfully in the case of the spill." The captain further stated that the "masters, officers and crew of tank vessels should be the best in the business", but that "if they are driven from this area by criminal enforcement policies, we will end up with mediocrity where we should have excellence." I concur with these observations. Strict criminal liability does not improve the marine transportation industry's ability to attract or retain experienced vessel masters and crews, and does not further the oil spill prevention and response goals of OPA90.

Mr. Speaker, again in March 1999, the House Coast Guard and Marine Transportation Subcommittee and the House Water Resources and Environment Subcommittee conducted an oversight hearing to review the implementation of OPA90 on the 10th anniversary of the EXXON VALDEZ oil spill in Alaska. Notably, the issue of criminal liability in oil spill incidents are raised several times during the hearing where AWO, the American Petroleum Institute (API), INTERTANKO, and the Chamber of Shipping of America all stated that the threat of strict criminal liability of oil pollution incidents requires immediate reform and that the issue is their top legislative priority.

The Coast Guard recently confirmed that its "criminal prosecution of environmental crimes is reserved for only the most egregious cases, where evidence of willful misconduct, culpable negligence, failure to report a spill, or attempts to falsify records, is considered with significant harm to the environment or the threat of such harm." However, despite the fact that the "Coast Guard has never a case based on

strict liability violations", other agencies, including the U.S. Department of Justice, have prosecuted at least four vessel pollution cases since the enactment of OPA90 using strict criminal liability statutes. The availability and use of such statutes continues to undermine cooperative and effective oil spill prevention and response efforts.

Mr. Speaker, the legislation we are introducing today will not change the tough criminal sanctions, that were imposed in OPA90. Rather, the legislation will reform the pre-eminent role of OPA90 as the statute which provides the exclusive criminal penalties for oil spills. In so doing, it will eliminate the unjustified use of strict liability statutes that undermine the very objectives which OPA90 sought to achieve, namely to enhance the prevention of and response to oil spills.

RECOGNIZING AN EAST TEXAS STUDENT

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. HALL of Texas. Mr. Speaker, I rise today in recognition of Taylor Garrett of Van, TX, for his research efforts in Madrid, Spain, last summer that formed the basis for his Honors thesis during his senior year at Southwestern University in Texas. He and his professor, Dr. Daniel Castro, spent 6 weeks at the Archivo Historico Nacional de Madrid researching 16th to 19th century documents dealing with the Spanish Inquisition. To be chosen for this research opportunity was a great honor, and Taylor was chosen due to his proficiency in the Spanish language and his strong interest in the history of this period.

Once in Madrid, these two researchers catalogued materials from archives in an effort to discover the role of women and other "voiceless" constituencies during the colonial Inquisition. For 6 weeks Taylor's main role was to translate paleography—a symbol-based language—into English. Southwestern University supports collaborative research between students and faculty, and I am proud that this young Texan from my district was selected to participate in this important project.

Mr. Speaker, I am pleased to have the opportunity to recognize the achievements of Taylor Garrett and to commend him for his enthusiasm for learning, his willingness to work hard, and his commitment to high academic standards—qualities that are crucial to our Nation's continued leadership in research and discovery efforts in all fields.

THE FERES DOCTRINE

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. KANJORSKI. Mr. Speaker, I rise to seek recognition to introduce a bill that will overturn what has come to be known as the "Feres doctrine." In introducing this legislation I hope